83-694

No. A-128

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

MARIO P. GONZALEZ,

Petitioner and Appellant,

v.

COMMISSION ON JUDICIAL PERFORMANCE OF THE STATE OF CALIFORNIA,

Respondent and Appellee,

THE STATE OF CALIFORNIA;
THE SUPREME COURT OF THE STATE OF CALIFORNIA,

Real Parties in Interest.

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED ON APPEAL

I WHERE IMPEACHMENT ("REMOVAL") PROCEEDINGS ARE BROUGHT AGAINST A JUDGE, RESULTING IN A TRIAL AND ACQUITTAL, DOES THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT, AS INCORPORATED INTO THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, PROHIBIT:

A. AN "APPEAL" BY THE STATE FROM THE JUDGMENT OF ACQUITTAL?

B. A "RE-TRIAL" BY THE REVIEWING ("APPELLATE") TRIBUNAL BASED ON THE TRIAL TRANSCRIPTS, WHEREIN CREDIBILITY OF WITNESSES AND THE WEIGHT OF THE EVIDENCE ARE REASSESSED, RESULTING IN A FINDING OF "GUILTY"?

II ARE RULES NO. 913, 914 AND 919 OF THE CALIFORNIA JUDICIAL COUNCIL, PERMITTING AN APPEAL AND REVIEW FROM AN ACQUITTAL, UNCONSTITUTIONAL AND VOID IN VIOLATION

OF U.S. CONSTITUTION AMENDMENTS FIVE AND FOURTEEN?

III WAS THE ORDER OF THE SUPREME COURT OF THE STATE OF CALIFORNIA, REMOVING APPELLANT FROM JUDICIAL OFFICE, AN ACT IN EXCESS OF JURISDICTION OF THAT COURT AND NULL AND VOID?

IV DID THE REMOVAL OF APPELLANT FROM JUDICIAL OFFICE CONSTITUTE A DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS AND A DENIAL OF EQUAL PROTECTIONS OF THE LAW, IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS FIVE AND FOURTEEN?

PARTIES TO THE ACTION

The appellant, MARIO P. GONZALEZ, was a Judge of a Court of record in the State of California, to wit, the Municipal Court for the East Los Angeles Judicial District. The Supreme Court of the State of California ordered him re-

moved from office on Recommendation of the California Commission on Judicial Performance (respondent herein), pursuant to certain provisions of the California Constitution and Rules promulgated by the California Judicial Council, an agency of the State of California. Because the questions of the jurisdiction of the California Supreme Court to order appellant's removal, and the constitutionality of certain Rules of the California Judicial Council ("Laws" of the State of California), are a necessary part of this appeal, the State of California and the California Supreme Court have been designated as Real Parties in Interest.[1/]

1/ The prosecution of the complaint of alleged judicial misconduct was conducted by the Chief Law Officer of the State of California, the Attorney General for the State of California.

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No. A-128

IN THE

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MARIO P. GONZALEZ,

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v.

COMMISSION ON JUDICIAL PERFORMANCE OF THE STATE OF CALIFORNIA,

Respondents and Appellee,

THE STATE OF CALIFORNIA; THE SUPREME COURT OF THE STATE OF CALIFORNIA,

Real Parties in Interest.

JURISDICTIONAL STATEMENT

GROUNDS FOR INVOKING JURISDICTION OF THIS COURT

This is an appeal from the Order of the California Supreme Court filed June 22, 1983, denying, without hearing, appellant's Petition

for Writ of Review, wherein appellant brought a constitutional challenge to the procedures of the respondent and to the validity of the California Judicial Council Rules (hereafter "Rules") No.'s 913, 914 and 919. A copy of the Order of June 22, 1983, denying appellant's Petition, is found in the Appendix at p. 46.

Included in appellant's Petition for Writ of Review was a Petition to Recall the Mandate in his original Petition to review the Recommendation of the Commission on Judicial Performance of the State of California (Respondent and Appellee) that appellant be removed from judicial office.[2/]

The basis for the Petition to Recall the Mandate was that since appellant had been acquitted and placed in jeopardy at his original

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[2/] App. pp. 108-117, the February 7, 1983, Opinion of the California Supreme Court adopting the Recommendation of respondent that appellant be removed from judicial office, and ordering his removal, is reported in Vol. 33, California Reports 3d Series, at p. 359, and is set forth in the Appendix at pp. 1-45.

trial, and had been denied Due Process (in that the Ru.es permitting an appeal from his judgment of acquittal were unconstitutiona), the Respondent and the California Supreme Court had proceeded in excess of jurisdiction in the Recommendation and subsequent Order of Removal.

A Notice of Appeal from the Order of June 22, 1983, and the underlying Order of February 7, 1983, was filed on August 19, 1983. A copy of the Notice of Appeal is found in the Appendix at p. 47.

The statutory provision conferring jurisdiction of the appeal on this Court is 28 U.S.C.A. §1257(2), as elaborated upon in this Court's decision in District of Columbia Court of Appeals v. Feldman, (1983) ___ U.S. ___, 103 S.Ct. 1303.

The time for docketing this appeal was extended to and including November 4, 1983, by an Order of the Hon. William H. Rehnquist dated August 23, 1983 (copy of Order in App., p. 49).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

1. United States Constitution Amendment V: "No person shall. . . be subject for the same offense to be twice put in jeopardy of life or limb;. . .nor be deprived of . . .property, without due process of law. . .".

2. United States Constitution Amendment XIV: ". . .Nor shall any State deprive any person of life, liberty or property without due process of law. . .".

3. California Constitution Article Six, Section 18(c)(2) and (f). The full text of that California constitutional provision can be found in the Supplement to West's Annotated California Codes, "Constitution," Vol. 2 at p. 143. The complete text of Article Six, Section 18 is found in the Appendix at p. 50. The relevant provisions provide as follows:

"(c) On recommendation of the Commission on Judicial Performance the Supreme Court may. . .(2). . .remove a judge for action . . .that constitutes wilful misconduct in office. . .or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. . .".

* * *

"(f) The Judicial Council shall make rules implementing this section. . ."

4. Rules for removal of Judges adopted by Judicial Council of the State of California (now denominated "California Rules of Court"), Rules 913, 914, 919. The full text of Rules No. 901-922 inclusive are reported in Vol. 23, part 2 of West's Annotated California Codes, pp. 3-25 inclusive. The full text of Rules 913, 914 and 919 are set forth in the Appendix at pp. 55-58. The relevant provisions of the Rules in question as they apply to this appeal are as follows:

Rule 913: ". . .The examiner. . .may file with the Commission. . .a statement of objections to the report of the masters. . .". Rule 914: ". . .If such statement is filed . . .the Commission shall give the Judge and the examiner an opportunity to be heard orally before the Commission."

STATEMENT OF THE CASE

California Constitution Article Six, Section 18, authorizes removal of Judges of record under certain conditions. These removal procedures have been characterized by the California Supreme Court as "A Constitutional alternative to the impeachment process." McComb v. Commission, (1977) 19 Cal.3d Special Tribunal Supp. 1,8. The Rules implementing Article Six, Section 18, the procedures and proceedings, are analogous to California State Bar disciplinary proceedings. Geiler v. Commission, (1973) 10 Cal.3d 270, 275.

In 1980, petitioner was served with allegations of judicial misconduct and later with notice of formal proceedings, consisting of seven counts and 55 sub-counts of "wilful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Three special masters (retired Superior Court Judges, hereinafter referred to as the "trial panel"), were appointed to take testimony on the matter and the Commission on Judicial Performance appointed "examiners" to present the case. (The examiners were Deputies Attorney General of the State of California and will hereinafter be referred to as "prosecutors"). Thereafter, a hearing ("trial") was heard before the trial panel. This hearing took place over a period of 17 days and consisted of over 75 witnesses presented by both the prosecutors and the appellant, who represented himself in propria persona.

In November, 1981, the trial panel issued findings of fact and conclusions of law as to each

of the counts and sub-counts (App., p. 59-107), the ultimate findings ("conclusions") being that "Respondent has not engaged in actions which constitute wilful misconduct in office or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (App. p. 107).

Thereafter, pursuant to the purported authority of Rule 913, the prosecutors "appealed" to the Respondent Commission on Judicial Performance (hereafter "appellate panel"), arguing, inter alia, that the evidence at trial supported a judgment of conviction, and urging the appellate panel to adopt findings and conclusions of guilty, contrary to the findings of innocence of the trial panel.

Appellant was then given a Rule 914 "hearing" before the appellant panel. Appellant's oral argument in response to the prosecutor's appeal was that the finding at his trial of "not guilty" was fully supported by the documentary evidence and the evidence of the more than 75 witnesses produced at trial; and that

it was impossible for him, either procedurally or financially, to have these witnesses produced before the appellate panel.

The appellate panel, based on the transcript of proceedings of the trial, adopted the proposed version of the facts presented by the prosecutors; made findings of fact directly contrary to those of the trial panel; made a sub silentio finding of "guilty," and pursuant to Rule 919 recommended appellant's removal to the California Supreme Court. These findings of fact by the appellate panel (the respondent/appellee herein) are set forth in the margin of the Supreme Court's Opinion in Gonzalez v. Commission (1983) 33 Cal.2d 359, and in the Appendix at pp. 7-15).

The Commission's recommendation of removal was filed with the California Supreme Court. The power of the California Supreme Court to remove a Judge for misconduct is contingent on the Commission having made this recommendation. Geiler v. Commission, supra, 10 Cal.3d 276. The

appellant, now represented by counsel and pursuant to Rule 919, petitioned the Supreme Court for a Writ of Review. The basis of the Petition for Writ of Review was that the findings of the trial panel should be sustained. The California Supreme Court ruled that the findings of judicial misconduct by the appellate panel were sustained by the evidence produced before the trial panel and ordered the removal of Appellant.

On May 20, 1983, appellant filed with the California Supreme Court a document denominated by that Court (App., p. 46) as a "Petition for Writ of Review or Alternatively, a Motion for Recall of Remittitur or Motion to Recall, Vacate and Amend Judgment." The grounds for that verified Petition/Motion were that (1) the Commission was without jurisdiction to conduct a second trial of petitioner after his first exoneration/acquittal, and was without jurisdiction to recommend appellant's removal; (2) that the California Rules of Court, Rules 913, 914 and 919, purporting to confer such jurisdiction,

were unconstitutional and void, in violation of the Due Process, Equal Protection and Double Jeopardy provisions of the United States Constitution, Amendments V and XIV; (3) the "recommendation of removal" was an act in excess of the jurisdiction of the Commission, a nullity and void, and (4) since the recommendation of removal was a nullity and void the Supreme Court was without jurisdiction to order the removal of petitioner.

The subsequent Petition for Writ of Review, etc., was denied on June 22, 1983 (App., p. 46) without hearing.

REASONS WHY QUESTIONS PRESENTED ARE SUBSTANTIAL AND REQUIRE PLENARY CONSIDERATION

This is a case of first impression wherein a constitutional officer is impeached, although acquitted at trial.[3/] The trial panel (the sole

[3/] The United States Constitution, Article 1, Section 3 Cl. 7, dealing with impeachment, refers (cont.)

judges of the credibility of witnesses and the weight of the evidence) acquitted the accused. State law permitted an appeal by the prosecution ("examiners") and a contrary finding of guilt by the appellate panel based solely upon the trial transcripts, the "cold" record.

Inextricably intertwined in this appeal are the questions as to the nature of the State proceedings and the Fifth Amendment concept of Double Jeopardy as that term coincides with the notion of "Due Process" interpreted by this Court and imposed on the States through the Fourteenth Amendment.

A number of decisions by this Court touch upon the basic constitutional provisions and their application, and the power of this Court to review State action of this sort.

3/ (cont.)

to the "party convicted." California Constitution, Article Four, Section 18, dealing with the same subject matter, refers to the "party convicted or acquitted."

United States Constitution, Article III, Section 2 Cl. 3, refers to "the trial. . . in Cases of Impeachment. . .".

This Court has held recently, in District of Columbia Court of Appeals v. Feldman, supra, 103 S.Ct. 1303, 1312, that in considering Due Process objections and the power of the Federal Court to act, that it is immaterial whether the State action be characterized as administrative or judicial, and that the nature of the proceedings "depends not upon the character of the body but upon the character of the proceedings." The present proceedings are both administrative and judicial in nature, but are unquestionably State action and a "case or controversy" reviewable by this court. In re Summers, 325 U.S. 561, 65 S.Ct. 1307 (1945).

Since the California Supreme Court has recognized that removal proceedings are analogous to State Bar disciplinary proceedings, (Geiler v. Commission, supra, 10 Cal.3d 270, 275), then it must be recognized that the proceedings are "quasi-criminal" in nature. In re Ruffallo, (1968) 390 U.S. 544, 550-551, 88 S.Ct. 1222, 1226; "...[Disbarment proceedings]. . . are adversary proceedings of a quasi-criminal

nature. . ." and, ", , ,Disbarment designed to protect the public is a punishment or penalty imposed on the lawyer. . .". This same principle was recognized by the California Supreme Court. Golden v. State Bar, (1931) 213 Cal. 237, 247; Furman v. State Bar, (1938) 12 Cal.2d 212, 229.

In Schwarze v. Board of Bar Examiners, (1957) 353 U.S. 232, 238-239, 77 S.Ct. 752, 756, this Court held: "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."

In Benton v. Maryland, (1969) 395 U.S. 784, 89 S.Ct. 2056, 2062, this Court stated that, ". . .We today find that the Double Jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and that it should apply to the States through the Fourteenth Amendment."

Whether the questions presented on this appeal are characterized as "Double Jeopardy"

questions or one of deprivation of Due Process and Equal Protection of the law, the issue is the same. What occurred to appellant was a re-trial, on appeal, of a judgment of acquittal. In discussing the Double Jeopardy provisions of the Fifth Amendment this Court has stated that, ". . .The prohibition against multiple trials [is] the controlling Constitutional principle." United States v. Wilson (1975) 420 U.S. 332, 345, 346, 95 S.Ct. 1013, 1023. In that case this Court held that although the Double Jeopardy Clause permits an appeal by the Federal Government where there had been an original finding of guilt by the trier of fact, the policies underlying the Double Jeopardy Clause are offended where the Government is permitted to appeal after a verdict of acquittal (Wilson, 420 U.S. at 352, 95 S.Ct. at 1026):

> "Granting the Government such broad appeal rights would allow the prosecutor to seek to persuade a second trier of fact of the defendant's guilt after

having failed with the first; it would permit him to re-examine the weaknesses in his first presentation in order to strengthen it in the second; and it would disserve the defendant's legitimate interest in the finality of a verdict of acquittal."

The underlying premise is that a State shall not be permitted to make repeated attempts to convict a person, "thereby subjecting him to embarassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." Green v. United States, (1957) 355 U.S. 184, 187-88, 78 S.Ct. 221, 223.

Since Rule 913 has been construed by the California Supreme Court as permitting an appeal from a judgment of acquittal, this Rule must be declared a nullity since it offends both the Due Process and Double Jeopardy Clauses. If the Commission on Judicial Performance could not

entertain such an appeal, then they lack jurisdiction to recommend appellant's removal since,

> "An unconstitutional Act is not a law; it confers no rights; imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never passed." Norton v. Shelby County (1886) 118 U.S. 425, 6 S.Ct. 1121.

Once the Commission applied for and obtained three special masters to conduct the trial of the petitioner, they were bound by the findings of the trier of fact where these findings were that of exoneration or acquittal. Acting as an appellate body, they simply cannot constitutionally substitute their judgment as to the credibility of the witnesses or the force of the evidence produced by the prosecution (examiners); nor could they have conducted a second trial where the prosecution (examiners) were entitled to represent all of the evidence produced at the first trial, since it would

disserve the defendant's legitimate (and constitutional) interest in the finality of a verdict of acquittal. United States v. Wilson, supra, 420 U.S. 352, 95 S.Ct. 1026.

Respectfully submitted,

BURTON MARKS
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MARIO P. GONZALEZ

APPENDIX

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APPENDIX

[L.A. No. 31572, Feb. 7, 1983.]

MARIO P. GONZALEZ, a Judge of the Municipal Court, Petitoner, v. COMMISSION ON JUDICIAL PERFORMANCE, Respondent.

33 Cal.3d 359

OPINION

THE COURT.*--Petitioner was appointed municipal court judge in May 1972. In June 1980 the Commission on Judicial Performance (Commission) notified petitioner, pursuant to rule 904 of the California Rules of Court, of certain allegations of judicial misconduct.[1] In November 1980 the Commission served petitioner with a notice of formal proceedings, as required by rule 905,

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*Before Bird, C.J., Mosk, J., Richardson, J., Kaus, J., Reynoso, J., Grodin, J., and McClosky, J.+

+Assigned by the Chairperson of the Judicial Council.

[1]Unless otherwise specified, all further rule references are to the California Rules of Court.

consisting of seven counts and fifty-five sub-counts of "wilful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" (hereinafter "wilful misconduct" and "conduct prejudicial," respectively).

We appointed three special masters to take testimony on this matter, and the Commission appointed examiners to present the case. After 17 days of confidential hearings the masters issued their report to the Commission in November 1981, concluding that petitioner had not engaged in wilful misconduct or conduct prejudicial. The Commission heard oral argument, and in May 1982 issued its findings of fact and conclusions of law, sustaining 21 counts of wilful misconduct and conduct prejudicial. The Commission recommended that petitioner be removed from office.

(1) Judge Gonzalez disputes the Commission's findings and recommendation, and petitions this

court for review. Beyond challenging the merits of the Commission's conclusions, he raises a procedural objection that we dispose of at the outset. He claims that by granting the examiners an additional 10-day extension to file their objections to the report of the masters, beyond the 30-day extension initially granted, the Commission violated Rule 915, which limits time extensions to 30 days "in the aggregate." In addition, he contests the Commission's acceptance of the objections, filed two days after the expiration of the second extension.

Although he does not request any specific form of relief, presumably petitioner contends this proceeding should have been terminated upon the examiner's failure to meet the filing deadlines. His claim is without merit. Not only was Judge Gonzales not prejudiced by the 12-day delay (McCartney v. Commission on Judicial Qualifications (1974) 12 Cal.3d 512, 519 [116 Cal.Rptr. 260, 526 P.2d 268]), but in fact he benefitted

from the Commission's liberality by requesting and receiving "identical time" to file his own objections. Furthermore, as a matter of policy, it would be unwise to forsake inquiry into the substance of serious allegations of judicial misconduct merely because of such a brief procedural delay.

[33 Cal.3d 365]

(2) We turn now to the merits of Judge Gonzalez' case and begin by summarizing the duties and standards governing our review. Initially it is our duty independently to review the evidence adduced by the masters. The standard of proof we must apply is well established; the allegations must be proved by "clear and convincing evidence sufficient to sustain a charge to a reasonable certainty." (Geiler v. Commission on Judicial Qualifications (1973) 10 Cal.3d 270, 275 [110 Cal.Rptr. 201, 515 P.2d 1].) (3) We have also defined standards of judicial performance to guide our review of the

Commission's disciplinary recommendation: "The ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office." (Id. at p. 281.)

(4) The charge of wilful misconduct connotes "unjudicial conduct which a judge acting in his judicial capacity commits in bad faith, . . ." (Id. at p. 284.) "Bad faith" is equivalent to actual malice and encompasses the intentional commission of acts which the judge knew or reasonably should have known were beyond his lawful power, as well as acts which though within the ambit of lawful judicial authority are committed for purposes other than the faithful discharge of judicial duties. (Spruance v. Commission on Judicial Qualifications (1975) 13 Cal.3d 778, 796 [119 Cal.Rptr. 841, 523 P.2d 1209].)

(5) The lesser included charge of conduct prejudicial connotes "conduct which a judge undertakes in good faith but which nevertheless

would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office," as well as wilful misconduct out of office, "i.e., unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity." (Geiler, supra, 10 Cal.3d at p. 284 & fn. 1].) (6) A judge may be censured or removed from the bench only for wilful misconduct or conduct prejudicial.

In keeping with our obligation to scrutinize the record, we have examined in detail the full transcript of the hearings before the masters, the examiners' objection to the report of the masters, the report of the masters, the Commission's findings of fact and conclusions of law, as well as the briefs filed in this court. We concur in 20 of the Commission's 21 charges of wilful misconduct and/or conduct prejudicial, adopt its findings of fact on these counts as our own, and set out pertinent portions of its

findings in the margin.[2] We summarize the fac-

[33 Cal.3d 366]

tual determinations and legal conclusions reached.

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[2]The Commission's findings, in pertient part, are as follows:

"FINDINGS OF FACT

"I (Count III, Paragraphs 3c and 3a)

"Respondent has used his judicial office improperly in influencing, or attempting to influence, law enforcement officers and officers of the court concerning criminal matters.

"1. In March, 1978, Respondent summoned Deputy District Attorney Joseph R. Martinez, to his chambers to attempt to influence him to dismiss a case not then pending before Respondent, the case of People v. Frank Jose Terrone (M191676), in which defendant had already pleaded [p. 366] guilty and had been sentenced. Present in Respondent's chambers was Los Angeles County Deputy Sheriff Art Guerra, who regularly sought and received from Respondent dismissals of traffic cases on behalf of defendants, and who previously had requested such a dismissal from Mr. Martinez and had been refused.

"2. In May, 1978, Deputy District Attorney Joseph R. Martinez was contacted regarding a felony case, People v. Kasparian (A343101), by three people: the defendant's father, Mr. Semon Kasperoff, a wealthy, influtential member of the community and long-time friend of Respondent's, and another person, concerning an immediate disposition of the case. Mr. Martinez told them that it was a good case which would proceed to preliminary hearing, and suggested that they seek the assistance of an attorney. Later that same day, Respondent telephoned Mr. Martinez about

(7) First, we find clear and convincing evidence that judge Gonzalez has

[33 Cal.3d 367]

used his judicial office improperly by attempting

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the Kasparian case, which was not then pending before Respondent, and asked if Mr. Martinez would discuss the matter in his chambers with the above-named persons. It was Mr. Martinez' belief, based on his prior experiences with Respondent, that Respondent wanted him present in his chambers to attempt to pressure him into a dispostition of the case.

". . . . . .

II. (Count 1, Paragraphs 1, 2, 3, and 5)

"Respondent has acted improperly, unreasonably, and arbitrarily in matters of bail-setting and own-recognizance release.

"1. Respondent admitted that in three cases during his tenure on the bench, after he had denied motions to release on own recognizance, he had offered to grant such releases if defense counsel would issue personal checks for $25 to their favorite charity, which Respondent would hold and return to them after the cases had been terminated. Respondent advised defense counsel that if they had that much trust and confidence in their clients, they could prove that good-faith belief in their clients' integrity by advancing their own personal checks.

". . . . . .

"2. On or about December 17, 1975, in Peoplve v. Larry Williams (M175329), Deputy Public Defender Bruce Hoffman appeared before Respondent to request an own recognizance release

to intercede in criminal mat-

[33 Cal.3d 368]

ters on behalf of friends and benefactors.

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for defendant Williams. Hoffman was appearing for the attorneys of record, private counsel Stan Delnick. Respondent, without allowing argument op the merits, stated that defendant's motion would be denied unless Mr. Hoffman was requesting defendant's own recognizance release as a special favor, in which event the motion would be granted.

"3. On or about December 17, 1975, in the case of People v. Larry Williams (M175329), Stan Delnick, a private attorney appointed to represent defendant Williams, requested that Respondent release defendant on his own recognizance. Respondent refused to order an own-recognizance release for defendant Williams, who was then free on his own recognizance in two other pending cases, but agreed to release defendant upon Mr. Delnick personally posting $50 cash bail, in violation of Rule 5 104(A) of the Code of Professional Conduct, which was done.

"4. On or about February 3, 1975, in the case of People v. Manuel Cruz Cerda (M167759), defendant appeared before Respondent for arraignment. The charge was violation of Penal Code Section 148. Deputy District Attorney Richard Neidorf and the filing deputy for the District Attorney's office, Les Cortez, both moved for dismissal of the case.

"Respondent then read the police report and inquired of the defendant as to certain factual matters such as what defendant Cerda had allegedly done to violate the law. Deputy Public Defender Bruce Hoffman objected to the questioning. Thereupon, Respondent denied the motion

(Finding I.[3]) In People v. Frank Terrones and in People v. Kasparian Judge Gonzalez contacted

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to dismiss, set a pre-trial date for February 7, 1975, and set bail at $500.

"Mr. Hoffman moved for defendant's release on his own recognizance. Respondent refused to entertain the motion, indicating that he had lost jurisdiction in the case once it had been set for pre-trial. Respondent indicated that he would not entertain the motion because Mr. Hoffman had been the one who had opened his mouth when Respondent had attempted to question the defendant.

"III. (Count VII, Paragraph 4)

"Respondent repeatedly has made insulting comments from the bench about the judges with [p. 367] whom he shared the East Los Angeles bench. It is true that on occasions Respondent did critically remark as to the work habits of his judicial colleagues and did recklessly threaten and impugn the integrity of his colleagues.

"IV. (Count III, Paragraphs 1a, 1b, 1b and 2c)

"Respondent has overreached his judicial authority by conducting court proceedings in the absence of counsel for one or both parties and exerting undue, improper pressure upon a defendant to plead guilty.

"1. In late 1974-early 1976, former Deputy Public Defender Vernon Puttnam was involved in a proceeding in another division when he was summoned to appear in Respondent's courtroom. Mr. Putnam finished his appearance and proceeded to Respondent's courtroom where his client's motion to declare a prior conviction unconstitutional was on calendar. When Mr. Putnam entered Respondent's courtroom, he discovered his client seated in the witness chair giving testimony in response to questioning by either

[3](See p. A-15)

the deputy in charge of the district attorney's office in East Los Angeles and attempted to

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Respondent or the prosecutor.

"Mr. Putnam objected to the impropriety of commencing the hearing in his absence. Following argument between Respondent and Mr. Putnam, Respondent disqualified himself, and the matter was transferred to another division for a de novo hearing. Respondent's explanation was that his court was busy. Mr. Putname had not responded to the summons, so Respondent had started without him.

"2. During a case heard by Respondent between 1975 and the first part of 1976, then Deputy Public Defender James tucker arrived in Respondent's courtroom and discovered that the hearing on his client's motion to suppress evidence had commenced without him. When Mr. Tucker arrived, the police officer witness was on the witness stand being examined by Respondent, and the defendant was seated at counsel table. Mr. Tucker objected to Respondent's commencement of the hearing in his absence. Respondent offered to start over, but subsequently transferred the matter to another division.

"3. Between approximately Ap;ril 1978 and October 1979, when the prosecutor was late returning to Respondent's courtroom after lunch, Respondent continued with the voir dire of the veniremen in the prosecutor's absence.

"4. On or about March 23, 1976, in the case of People v. Frank Ol Ortega, the prosecution moved to dismiss the case against defendant Ortega, who had wrongfully been arrested and was being held in custody. Respondent said he would grant the motion to dismiss the case only if the defendant agreed not to sue the county for false arrest. When Deputy Public Defender

induce him to dismiss criminal charges. In Terrones (Count III, par. 3(c)[4]) he acted at

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Bruce Hoffman complained thathis client was being coerced because he was in custody, Respondent replied that he was a taxpayer and that he was acting in the tazpayers' and the county's best interests.

"V. (Count V, Paragraphs 2, 3, 9, and 15)

"Respondent has repeatedly conducted court business in a manner which ignores procedures required by law and essential to the fair, orderly, and decorous administration of justice.

"1. Respondent has left the bench abruptly during proceedings in his courtroom. On two such offcasions during 1977-1978, he instructed counsel for the parties to continue adducing testimony while he was gone so that he could rule on the objections when he returned to the bench. In each instance--once in a jury trial and once in either a court trial or a preliminary hearing--testimony continued during Respondent's absence from the court.

"2. On or about May 25, 1978, in the case of People v. Rebecca Hernandez (S.A.A.C. No. 6076), Respondent dismissed the charges and declared a county ordinance unconstitutional in a press release issued in chambers, outside regular court hours, without notice to or appearance by the prosecution and without appearance by the defendant.

"3. Between 1972 and 1977, Respondent occasionally entered the jurors' room during their deliberations and in the absence of either counsel for the People or for the defense, or both, and without valid legal cause. Inside, Respondent discussed issues material to the cases upon which the juries had been deliberating. Respondent admitted in testimony that he 'wasn't concerned

[4](See p. A-15)

the behest of a law enforcement official; in Kasparian (Count III, par. 3(a)) he sought to

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if the District Attorney wasn't present. . .'.

"4. On one occasion, Respondent informed the Public Defender's office that, on the forthcoming Thursday, he would impose only one-half of his customary sentence or fine in cases [p.368] where the defendant pleaded guilty. All the deputy public defenders took advantage of Respondent's prospective offer, by advancing their cases on calendar to coincide with the appointed 'Bargain Day.' Respondent indeed imposed one-half the customary fines upon defendants pleading guilty on that day.

"On this occasion or a second, Respondent also announced the identical offer to a courtroom full of defendants. In neither announcement did Respondent limit his proposed deal to one-point vehicle infractions; on the contrary, it actually applied to misdemeanors.

"VI. (Count VI, Paragraphs 1, 3, 4, 5, and 6)

"Both in open court and in private communications with persons associated with the court, Respondent improperly engaged in personal verbal attacks, indulged in indelicate sexual and ethnic remarks, and made comments which cast doubt upon is appreciation of the nature and importance of his judicial duties and his ability to sit as a fair and impartial judge.

". . . . . .

"1. During pronouncement of a judgment on a tall, large male of Mexican extraction, on the charge of beating his wife, who was small in stature, the Respondent stated such a course of conduct may be tolerated in Mexico and Africa, but would not be tolerated in America.

"2. During jury voir dire in a criminal case in June or July, 1979, while questioning an Asian

help an influential friend whose son had been arrested. Though certain factual details were

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venireman about inflation, Respondent commented that he did not know why he was speaking to a Japanese juror about inflation because 'What do fishheads and rice cost?'

"3. During jury voir dire in a criminal case in approximately August or September, 1980, a black woman on the panel responded that she was a clerk at Safeway, and Respondent next asked her, 'What is the price of watermelon per pound?' The deputy district attorney winced at the question, and later advised Respondent that the question could be offensive to some blacks. Respondent, however, repeated the same question to the same black woman upon her appearance among a subsequent group of panel members.

". . . . . .

"4. In Judge Gilbert R. Ruiz' chambers in April or May, 1980, Respondent asnwered Deputy District Attorney David Milton's disclosure of his wife's miscarriage by saying, "Oh, good. One less minority,' or words to that effect. Thereafter, Respondent apologized.

"5. On December 19, 1979, at a Christmas party attended by most of the courthouse personnel, Respondent asked a Jewish deputy district attorney, Wendy Widlus, 'Tell me something, Wendy, with all the interbreeding that your people do, aren't you afraid that they will produce a race of idiots?' Ms. Widlus was offended, very angry, and considered the remark to be tastelss as well as anti-Semitic.

"VII. (Count IV)

"During the period of September, 1977 through April 1980, Respondent persistently made improper and unwanted sexual advances toward Maria Rody Moreno, an interpreter assigned to the

disputed, petitioner concedes that he often approached district attorneys to urge dismissal. The following quotation from his testimony epitomizes Judge Gonzalez' judicial philosophy on this issue. "[I]f a legislator, a sheriff, a political chairman] . . . if anyone who helped me or a brother judge on the bench were to call me and say, 'Mike, what can you do for this

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matter?' I'm going to tell them all the same thing, you know, that I can't dismiss it on my own motion. So let me refer you to the D.A. and see if what, if anything, he can do. And I don't care whether the D.A. tells me to go to hell. I don't care whether the D.A. calls up the

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East Los Angeles Municipal Court."

[3]"Findings" refer to the Commission's findings of fact and conclusions of law, rendered April 30, 1982.

[4]"Counts" refer to the original charges filed by the Commission in its notice of formal proceedings of December 22, 1980.

Assemblyman and the doctor and the sheriff and tells them to go to hell.

"I have cemented relationships between the person who referred that individual to me. And that person, if he was in chambers . . . will go back and tell his judge friend, 'Judge, I appreciate your opening the door of Judge Number 45. And I certainly appreciate Judge Number 45 trying to do what he can, too. But it was that dirty no-good D.A.'

"The referring judge gets points with his friends. I make points with the Judge, the D.A., the Assemblyman, the doctor, the sheriff, whoever it is. And that's the little game we play in the criminal justice system." (Italics added.)

In Terrones and in Kasparian Judge Gonzalez intentionally exploited his judicial office to attempt to influence the dispostion of criminal matters. His conduct therefore constitutes wilful misconduct.[5] (Spruance, supra, 13 Cal.3d at p. 798.)

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[5] (See p. A-17)

As a matter of law he has also violated canon 2B of the Code of Judicial Conduct, which provides that "A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him . . . ." In Spruance we held a similar violation of canon 2B to constitute wilful misconduct. (13 Cal.3d at p. 798.) Petitioner's instence that he "saw nothing judicially improper" about his conduct cannot preclude a charge of wilful misconduct, for that term embraces intentional conduct that a judge should have known was beyond his judicial authority. (Geiler, supra, 10 Cal.3d at p. 286.) Petitioner's patent misunderstanding

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[5]Where we find that petitioner's actions constitute wilful misconduct as a matter of law we also find that he has committed the lesser included offense of conduct prejudicial.

of the nature of his judicial responsibility serves not to mitigate but to aggravate the severity of his misconduct.

2.

(8) The record also supports the finding that Judge Gonzalez has acted improperly, unreasonably, and aribtrarily in matters of bail setting and own recognizance (OR) release. (Finding II.) On two or three occasions, as petitioner has admitted, he offered to grant OR motions which he had oringinally denied if defense counsel--in each case a public defender--would post a personal check in the amount of $25, payable to counsel's favorite charity, which he would hold and return on termination of the case. (Count I, par. 1.) Similarly, in the case of People v. Williams petitioner informed the private attorney ap-

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pointed to represent defendant that he would grant the OR motion on condition that the attorney

post his own $50 in cash as bail. (Count 1, par. 3.) Judge Gonzalez apparently reasoned that defense counsel could best prove trust and confidence in their clients by risking their personal funds. He further explained that his purpose was "both psychological and educational."

The legal impropriety of Judge Gonzalez' conduct on these occasions is obvious. He caused attorneys who did accede to the personal check policy to violate rule 5-104(A) of the Rules of Professional Conduct, which provides: "A member of the State Bar shall not directly or indirectly pay or agree to pay, guarantee, or represent or sanction the representation that he will pay personal or business expenses by or for a client . . . ." On the otherhand, a defense attorney's refusal or inability to post the necessary sum might seriously strain the attorney-client relationship by undermining the client's trust in his or her attorney. Moreover, by purporting to "educate" young public defenders to the

realities of criminal defense practice, Judge Gonzalez impermissibly sought to use his judicial office to further a "purpose other than the faithful discharged of judicial duties." (Spruance, supra, 13 Cal.3d at p. 796.) For these reasons, his action clearly constitutes wilful misconduct.

The record further reveals that in 1975, in People v. Williams, Judge Gonzalez refused to hear an OR motion on the merits, but offered to grant the requested release as a special or personal favor to the public defender. (Count I, par. 2.) At the hearing before the masters the private attorney of record in the case, who had not appeared before petitioner on the matter but who had instead asked the public defender to make the motion in his place, corroborated the testimony of the complaining public defender. Although the examiners concede that the public defender was not the attorney of record, petitioner bogs down in irrelevant arguments concerning the identity of the attorney

of record and fails to address the substance of the allegation itself. The fact remains that Judge Gonzalez offered to grant the requested OR release as a favor and refused to hear the argument on the merits. He was acting in his judicial capacity and knew or should have known that such conduct was beyond his lawful power. (Geiler, supra, 10 Cal.3d at p. 286.) Thus petitioner acted in bad faith and his action constitutes wilful misconduct.

Finally, in People v. Manuel Cruz Cerda, following a motion to dismiss by the People, Judge Gonzalez questioned the defendant directly on the facts of the case. When the public defender objected that his client was being interrogated on matters relating to guilt or innocence and instructed his client not to answer, he immediately fixed bail at $500, set a pretrial date, and refused to entertain the defendant's OR release motion. (Count I, par. 5.) Petitioner contends first that he does not remember the

incident, and alternatively that Judge Ruiz, then in charge of the district attorney's office, must have requested that defendant

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stipulate to probable cause. Again, however, petitioner's defense is speculative and unpersuasive, and again he fails to grasp the heart of the matter. Petitioner was not charged with unfairly demanding that the defendant stipulate to probable cause in return for a dismissal; he was charged with improperly refusing to hear the defendant's bail motion after turning down the prosecution's motion to dismiss. The evidence suggests petitioner refused to hear the motion because it was the public defender who had "opened his mouth" during the judge's questioning of the defendant. Such hostile, arbitrary, and unreasonable conduct jeopardizes the liberty of an indigent defendant for reasons not related to the merits of the case and therefore constitutes wilful misconduct. (Spruance, supra, 13 Cal.3d at pp.

795-797.)[6]

(9) We also find ample support in the record for the conclusion that Judge Gonzalez has made insulting and derogatory comments from the bench and in chambers impugning the character and competence of his judicial colleagues. (Finding III, count VII, par. 4.) Respondent presents uncontroverted evidence proving that on several occasions petitioner made grossly unflattering remarks regarding the physical appearance, impartiality, and work habits of his fellow judges. He insinuated that one judge had accepted a bribe and admitted to calling another judge a "coward" to his face.

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[6]Furthermore, we have held that extended and improper examination of witnesses by a judge places the judge in the role of advocate and may detract from the public image of the court as an impartial tribunal. (McCartney v. Commission on Judicial Qualifications (1974) supra, 12 Cal.3d 512, 533.

By his actions Judge Gonzalez has violated canon 2A of the Code of Judicial Conduct, which requires that judges conduct themselves "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Petitioner's brash criticisms and colorful insults were manifestly uttered in bad faith while petitioner was acting in his judicial capacity. (Spruance, supra, 13 Cal.3d at p. 796.) His actions therefore constitute wilful misconduct.

4.

(10) The record further reveals that Judge Gonzalez has engaged in a continuous course of overreaching and abuse of judicial authority. (Finding IV.) First, we find that petitioner conducted court proceedings on three occasions in the absence of counsel for one or both of the parties. (Count III, pars. 1a, 1b, and 1c.) Each of three complaining attorneys testified that when he entered petitioner's courtroom he

found that petitioner had actually begun proceedings without him.

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Judge Gonzalez denies the allegations but fails otherwise to impeach the attorneys' testimony. In a tone that rapidly grows tiresome, he reiterates a conspiracy theory typically raised as a defense in judicial misconduct investigations, and contends that the three attorneys simply fabricated their stories. As he does with virtually every allegation, Judge Gonzalez fundamentally misperceives the nature and gravity of the charge and instead views the entire matter as one of political disagreement or personality difference. His own testimony candidly displays his disdain for the three attorneys involved in this allegation: "I've never had a rapport as being an ex-cop and a judge in the very same courthouse wherein I was an ex-cop. I've never had a rapport with what I consider to be liberal-minded-orientated [sic] individuals, and [the

three complaining attorneys are] those kinds of people. And a person of my background and philosophy could never cut it with [them]. Moreover, Judge Gonzalez repeatedly boasts an abhorrence of tardiness and may well have thought he was justified in penalizing recalcitrant attorneys by his actions.

It is obvious that conducting judicial proceedings in the absence of counsel for one of the parties seriously interferes with the attorney-client relationship and may also infringe on the right of the accused to effective representation by counsel. Though petitioner may not have intended to harm the interests of any of the parties involved, he acted intentionally and in bad faith. (Spruance, supra, 13 Cal.3d at p. 796; Geiler, supra, 10 Cal.3d at p. 186.) He has therefore engaged in wilful misconduct.

We also find that in the People v. Frank O. Ortega case Judge Gonzalez improperly conditioned dismissing a case against the defendant--

who the district attorney conceded should not have been in custody--on the defendant's stipulation to the validity of the arrest. (Count III, par. 2c.) In fact the defendant in that case had mistakenly been arrested for failure to appear pursuant to a citation that did not call for his appearance until two days following the arrest. Because the defendant had spent two days in jail, the People acceded to the public defender's request that the charges be dismissed. Petitioner nonetheless conditioned dismissal on the defendant's stipulation to probable cause, explaining to the public defender that he was acting as a taxpayer in the best interest of the county. Despite some protestations that he did not remember the case, Judge Gonzales essentially conceded the accuracy of the testimony on the allegation.

By way of defense or explanation petitioner relies on Hoines v. Barney's Club, Inc. (1980) 28 Cal.3d 603 [170 Cal.Rptr. 42, 620 P.2d 628].

But Hoines sustains the prosecutor's prerogative--not the court's--to condition consent to a dismissal of charges on a stipulation of probable cause for arrest. (Id. at p. 611.) Nothing in Hoines suggests that when a prosecuting attorney declines to request a probable cause stipulation because the defendant had mistakenly been taken into custody and held in jail for two days, a judge may compound

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the injustice by insisting on the stipulation. Judge Gonzalez acted deliberately and unreasonably. His action is a form of judicial coercion and constitutes wilful misconduct as a matter of law.

5.

(11) Next, we find the record discloses that Judge Gonzalez has conducted court business in violation of proper judicial procedures, to the detriment of the fair, orderly, and decorous administration of justice. (Finding V, count V,

pars. 2, 3, 9, 15.) Specifically, petitioner has left the bench on several occasions during court proceedings, instructing counsel to continue adducing testimony in his absence and to note any objections in writing so that he might rule on them on his return. (Count V, par. 2.) As was customary in petitioner's chambers, on most of these occasions there was no court reporter to help reconstruct the questions asked or the objections taken. Judge Gonzalez denies the allegation and calls the examiners' witnesses "liars." His bailiff and clerk corroborated his denial.

As noted earlier, the standard of proof governing our review of the evidence is the "clear and convincing" standard first articulated by this court in Geiler. In resolving the credibility contest surrounding this allegation, we find, contrary to petitioner's claim, no evidence in the record that any of the examiners' three witnesses ever engaged in any "conspiracy" against

petitioner. With no motive to lie or fabricate, each witness testified, under oath, to observing judicial conduct so unusual that even the casual observer would have remembered it plainly.

By leaving the bench during judicial proceedings Judge Gonzalez has demonstrated a flagrant lack of respect for his judicial office, in violation of the general provision and spirit of canon 3 of the Code of Judicial Conduct. If only for a few moments at any one time, on these occasions he abandoned his role in the adjudicative process in utter disregard for his obligation diligently to perform the duties of his office. As such, his unjudicial behavior rises to the level of wilful misconduct.

Judge Gonzalez further demonstrates his disregard for proper judicial procedures by his highly unorthodox and patently improper disposition of the case of People v. Rebecca Hernandez. (Count V, par. 3.) The facts regarding this matter are virtually undisputed. The defendant was

cited for violating the county dog leash and license ordinance, and failed to appear on the appointed court date. In chambers, on the evening of May 25, 1978, petitioner on his own initiative dismissed the case and declared the ordinance unconstitutional on its face. No notice or opportunity to be heard was afforeded the People; no motion had ever been made by the defendant. Judge Gonzalez merely issued what he described in his testimony before the masters as "an opinion in the form of a

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press release." In an almost farcical misapplication of constitutional law, Judge Gonzales declared that the dog leash/license ordinance violated the equal protection clause of the Fourteenth Amendment because it applied to dog-owners but not to owners of "(a) Canaries, (b) Chinchillas . . .(k) Mynah birds . . .(o) Squirrel monkeys, (p) Steppe legal [sic] eagles, (q) Toucans . . ." and so on. Although Judge Gonzalez sought to

start the entire proceeding over so that any appeal taken might reach substantive issues, the district attorney refused to forego immediate review and petitioner's ruling was reversed because of its procedural impropriety.

Petitioner openly admits and defends his action: ". . . I did it under the theory that the statute was unconstitutional on its face, and a judge is permitted to do that if that be the case . . .As for that, it can be ex parte. That is the law." Yet, not surprisingly, petitioner does not cite any legal authority for the untenable conclusion that a judge may dispose of cases and invalidate legislation without affording the parties and opportunity to participate. By his flagrant and deliberate disregard for even the minimal requirements of fairness and due process petitioner has far exceeded the bounds of his judicial authority. (Geiler, supra, 10 Cal.3d 678, 694 [122, Cal.Rptr. 778, 537 P.2d 898].) Furthermore, the facts strongly suggest

that as a candidate for election to the superior court at the time of this ruling, Judge Gonzalez was motivated by a desire for preelection publicity. Though his "press release opinion" may indeed have earned him a certain political notoriety, such a blatant exploitation of the judicial office for political ends seriously and impermissibly undermines public esteem for the impartiality and integrity of the judiciary. While petitioner apparently fails to appreciate the gravity of his transgression, we hold his action to constitute wilful misconduct as a matter of law.

We also find that Judge Gonzalez has disregarded proper judicial procedures by entering the jury room during deliberations without counsel for both parties. (Count V, par. 9.) The examiners presented three witnesses who testified in significant detail that Judge Gonzalez repeatedly entered the jury room while the jury was deliberating. Petitioner admits he entered the jury room, but denies he ever did so in the absence

of defense counsel: "I've never gone in by myself. I've never gone in without cause just to see what they're doing, not without exception of the times that I've gone into the jury room when one or both or all three of us were present. I wasn't concerned if the D.A. wasn't present, but I was always concerned if the defense attorney wasn't present."

Petitioner denies the impropriety of any of entries into the jury room. He cites People v. Vinson (1981) 121 Cal.App.3d 80, 84 [Cal.Rptr. 123], for the proposition that a private communication between a judge and juror does not necessarily constitute reversible error. However, once again Judge Gon-

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zalez fails to grasp the heart of the matter, has not been charged with committing reversible error by his actions, nor is this the standard determining whether his misconduct is sanctionable. Rather, petitioner was charged with having

"conducted . . . court business in a manner demonstrating ignorance of and indifference to procedures required by law which are essential to the fair, orderly, and decorous administration of justice." It is of course well established that "private communication between court and jury are improper, and that communications should be made in open court. (People v. Alcalde (1944) 24 Cal.2d 177, [148 P.2d 627]; see also Paulson v. Superior Court (1962) 58 Cal.2d 1, 7 [22 Cal. Rptr. , 372 P.2d 641].) Although informal communications between judge and jury may not result in reversible error if an appeal is in fact taken, in our present purposes it is important to stress that such communications do interfere with the parties' right to the assistance of counsel and undermine public esteem for the integrity and impartiality of the judicial office. The evidence in this case clearly establishes Judge Gonzalez' patent indifference and disrespect for setting judicial practices.

He certainly should have known his jury room visits were beyond lawful powers. (Geiler, supra, 10 Cal.3d at p. 286.) We, therefore, find these actions constitute wilful misconduct.

Finally, we find that Judge Gonzales improperly disregarded judical procedures by announcing in open court, and later holding, called half-off sentencing "bargain day" for persons pleading guilty. (Count V, par. 15.) Petitioner admits he made the blanket offer, but maintains it was limited to Vehicle C violators. We find that in fact he extended the offer more broadly to include misdemeanors, some of whom were represented by public defenders who advanced their cases on calendar to coincide with "bargain day." Judge Gonzalez defends his use of the en masse plea bargaining technique by pointing to the court's congested calendar and by claiming to have sought "a couple of dollars for the county and a conviction for the state."

By his wholesale plea bargaining scheme Judge Gonzalez has deliberately misused his otherwise lawful power to reduce sentences and fines in individual cases. As we pointed out in Geiler, even the admirable goal of expediting judicial procedures cannot justify the court's abrogation of its duty to determine each case on its own merits. (Id. 10 Cal.3d at p. 285.) Judge Gonzalez further declared aims of filling the county cofferand scoring convictions for the state are of course completely extraneous to the administration of justice. Judge Gonzalez certainly should have known that his "bargain day" sentencing offer--even if limited to vehicular offenses--contravened the principle of individualized sentencing embodied in our Penal Code. (Pen. Code, § 1203 et seq.) We therefore find his action constitutes wilful misconduct as a matter of law.

(12) The record also reveals that both in open court and in private communications with persons associated with the court Judge Gonzalez improperly engaged in personal verbal attacks, indulged in indelicate sexual and ethnic remarks, and made comments that cast doubt on his appreciation of the nature and importance of his judicial duties. (Finding VI.) On pronouncing judgment on a male of Mexican extraction on a charge of beating his wife, petitioner stated that although such behavior might be tolerated in Africa or Mexico, it would not be tolerated in America. (Count VI, par. 6.) During jury voir dire in a criminal case he questioned a Japanese venireman about inflation and then commented that he did not know why he was speaking to a Japanese juror about inflation, because, "what do fishheads and rice cost?" (Count VI, par. 3.) During another jury voir

dire in a criminal case petitioner asked a black woman on the panel who had said she worked as a grocery clerk if she knew the price of watermelon. (Count VI, par. 4.) In a colleague's chambers petitioner responded to the news that a black district attorney's wife had had a miscarriage by saying, in essence, "Oh good, one less minority." (Count VI, par. 1.) Finally, at a Christmas party attended by most of the court personnel petitioner asked a female Jewish district attorney whether "with all the inbreeding your people do, aren't you afraid that they will produce a race of idiots," or words to that effect. (Count VI, par. 5.)

Petitioner vigorously insists that any ethnic or sexual remarks he may have made were made in jest, and that in fact he has never treated ethnic or minority groups unfairly. However, Judge Gonzalez' subjective intent is not at issue. As a judge he is charged with the obligation to conduct himself at all times in a manner that

promotes public confidence and esteem for the judiciary. Particular friends or associates may assure themselves that the judge's ethnic remarks are made in jest, but such facially blatant ethnic slurs as those Judge Gonzales uttered from the bench are apt to offend minority members not familiar with petitioner's views and may be construed by the public at large as highly demeaning to minorities. Regardless of his personal feelings on racial harmony or the propriety of ethnic humor, Judge Gonzalez should have known that his admittedly "salty" courtroom comments were unbecoming and inappropriate. The ethnic slurs uttered from the bench constitute unjudicial conduct by a judge acting in his judicial capacity and are therefore sanctionable as wilful misconduct. (Geiler, supra, 10 Cal.3d at pp. 283-284.)

The comment made off the bench regarding the black district attorney's wife's miscarriage and the Christmas party Jewish remark pose a

less serious threat to public esteem for the integrity of the judiciary. However, as held in In re Stevens (1982) 31 Cal.3d 403 [183 Cal.Rptr. 48, 645 P.2d 99], ethnic and racial epithets uttered in chambers do constitute the lesser offense of conduct

[33 Cal.3d 377]

prejudicial. (Id. at p. 404.) Derogatory remarks, although made in chambers or at a staff gathering, may become public knowledge and thereby diminish the hearer's esteem for the judiciary--again regardless of the speaker's subjective intent or motivation. The reputation in the community of an individual judge necessarily reflects on that community's regard for the judicial system. We hold that petitioner's "one less minority" and inbreeding remarks constitute conduct prejudicial to the administration of justice.

7.

Finally, we review the Commission's finding that during the period of September 1977 through

April 1980 Judge Gonzalez persistently made improper and unwanted sexual advance toward a court interpreter assigned to the East Los Angeles Municipal Court. (Finding VII, count VI.) Petitioner disputes the factual finding of sexual harassment. After close scrutiny of the entire record we are not persuaded that the charge is supported by clear and convicing evidence. This cahrge of conduct prejudicial is therefore not sustained.

We have sustained all eighteen of the Commission's charges of wilful misconduct and two of its three charges of conduct prejudicial. We turn now to our most important responsibility, the decision whether to adopt the Commission's recommendation that Judge Gonzalez be removed from office.

(13) In the final analysis Judge Gonzalez utterly fails to grasp either the substance or seriousness of the numerous charges levelled against him by the Commission. Despite multiple

admonitions and the normal evidentiary limitations of the hearing process, Judge Gonzalez has treated this investigation as an attack on his character. Thus he boasts he is opinionated, outspoken, hardworking, and extroverted, but never prejudiced and always impartial. He persists in his theory that his adversaries conspired to record his every misdeed and regards virtually every allegation as personally motivated. Rather than respond affirmatively and convincingly to the specific charges, he expends most of his defense effort in attacking the character and credibility of the adverse witnesses. While he concedes there may be certain minor irregularities in his judicial manner and procedures, he denies he has ever deliberately abused his judicial office and generally refuses to admit he has done anything improper.

Judge Gonzalez reiterates his conspiracy theory and offers character evidence to citigate punishment. Yet it is well established that there

can be no mitigation for maliciously motivated judicial misconduct. (Spruance, supra, 13 Cal.3d at p. 800), and we have found that on numerous occasions Judge Gonzales in fact acted in bad faith. We therefore give his claim of mitigating circumstances no significant weight.

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We recognize that since the advent of the Commission on Judicial Performance the bench has been governed by a higher standard of conduct than the bar. (Geiler, supra, 10 Cal.3d at p. 287.) Because we do not find that Judge Gonzales' misconduct rises to the level of moral turpitude, dishonesty, or corruption, we order that despite his removal from office he be permitted to practice law in California, on condition that he pass the Professional Responsibility Examination required of applicants seeking readmission or reinstatement to the bar. (Cal. Rules of Court, rule 952(d).) All attorneys who have been suspended from practice must pass this

examination before being readmitted. (Segretti v. State Bar (1976) 15 Cal.3d 878, 890-891 [126 Cal.Rptr. 793, 544 P.2d 929]), and we see no reason to exempt from this requirement a judge who, on removal from office, is automatically suspended from pacticing law. (Cal. Const., art. VI, §18, subd. (d).)

L.A. No. 31572

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT
FILED
JUN 22 1983
LAURENCE P. GILL, Clerk
/s/ J. ROSSI
Deputy.

MARIO P. GONZALES

v.

COMMISSION ON JUDICIAL PERFORMANCE

"Petition for Writ of Review or alternatively, a Motion for Recall of Remittitur or Motion to Recall, Vacate and Amend Judgment" is DENIED.

I, LAURENCE P. GILL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 22nd day of August A.D. 1983

Clerk

By /s/ A. Johnson
Deputy Clerk

/s/ BIRD
Chief Justice

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MARIO P. GONZALEZ, A Judge of the Municipal Court, v. COMMISSION ON JUDICIAL PERFORMANCE, Respondent,	NO. L.A. 31572 (INQUIRY CONCERNING A JUDGE No. 45) NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

TO: THE CLERK OF THE ABOVE-ENTITLED COURT AND TO RESPONDENT AND ITS ATTORNEYS:

PLEAS TAKE NOTICE that the petitioner, MARIO P. GONZALEZ, does hereby appeal from that certain Order and judgment of this Court filed June 22, 1983, denying petitioner's Petition for Writ of Review in the Nature of a Motion for Recall of Remittitur or Motion to Recall, Vacate and Amend Judgment, and from the underlying Order of this Court dated February 7, 1983, removing petitioner from his office as Judge of the Municipal Court for the East Los Angeles District; to the Supreme Court of the United States.

This Appeal is taken pursuant to the provisions of 28 U.S.C. § 1257(2) in that the aforesaid Order of June 22, 1982 (and the underlying decision dated February 7, 1983), constitute a decision in favor of the validity of certain State statutes, to wit, Judicial Council Rules 913 and 914 and 919, in the face of a challenge that said statutes are unconstitutional and void in violation of the Due Process, Equal Protection and "Double Jeopardy" provisions of the United States Constitution, Amendments Five and Fourteen.

DATED: August 18, 1983

Respectfully submitted,

/s/ B. MARKS
BURTON MARKS
A Professional Corporation
Attorney for Petitioner

SUPREME COURT OF THE UNITED STATES

No. A-128

MARIO P. GONZALEZ

v.

COMMISSION OF JUDICIAL PERFORMANCE

O R D E R

UPON CONSIDERATION of the application of counsel for the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including November, 1983.

/s/ William H. Rehnquist
Associate Justice of the
Supreme Court of the
United States

Dated this 23rd
day of August, 1983

18. Judges; disqualification; suspension; retirement; rules

Sec. 18. (a) A Judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement of the judge.

(b) On recommendation of the Commission on Judicial Performance or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed suspension

terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final the Supreme Court shall remove the judge from office.

(c) On recommendation of the Commission on Judicial Performance the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The commission may privately admonish a judge found to have

engaged in an improper action or a dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court is suspended from practicing law in this State.

(e) a recommendation of the Commission on Judicial Performance for the censure, removal or retirement of a judge of the Supreme Court shall be determined by a tribunal of 7 court of appeal judges selected by lot.

(f) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

(Added Nov. 8, 1966. Amended Nov. 5, 1974; Nov. 2, 1976.)

Former section 18 was repealed Nov. 8, 1966. See, now 17.

1974 Amendment. Eliminated the use of words "him", "his", and "he" and substituted neutered versions.

1976 Amendment. Changed the name from the "Commission on Judicial Qualifications" to the "Commission on Judicial Performance" throughout the section; substituted in subd. (e) following "misconduct in office," the words "persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs," for "wilful and persistent failure to perform the judge's duties, habitual intemperance"; added the last sentence in subd. (c) relating to private admonishment; inserted subd. (e); and relettered former subd. (e) to be subd. (f).

Law Review Commentaries

California merit plan for judicial selection. (1968) 48 S.Bar J. 156.

Causes of delay in criminal appeals: Decision by court. Winslow Christian (1971) 88 Stan. L.R. 699.

Commission on judicial qualifications: Attempt to deal with judicial misconduct. Richard S. Buckley (1969) 3 U.S.F.L.Rev. 244.

Desirability of proposals for disciplining judges. Herbert V. Walker (1957) 32 Los Angeles Bar Bull. 73.

Governor's view of judicial selection. Edmund G. "Pat" Brown (1974) 49 Los Angeles Bar Bull. 405.

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Judicial accountability. Jack E. Frankel (1974) 49 Los Angeles Bar Bull. 411.

Judicial accountability and judicial independence. William Bennett Turner (1980) 55 S.Bar J. 292.

Judicial conduct and removal of judges for cause in California. Jack E. Frankel (1962) 36 So.Cal.L.R. 72.

Judicial misadventures in California. Frank Greenberg (1979) A.B.A.J. 1492.

CALIFORNIA RULES OF COURT

DIVISION I

RULES FOR CENSURE, REMOVAL, RETIREMENT OR PRIVATE ADMONISHMENT OF JUDGES

Rules 901 through 922.

Adopted by the Judicial Council of the State of California, effective August 1, 1961, pursuant to the authority contained in Const. Art. 6, § 10b (repealed; see, now, Const. Art. 6, § 18).

Heading of Division 1 "Rules for Removal or Retirement of Judges" was amended effective Nov. 11, 1966; Jan. 1, 1977 to read as it now appears.

California Rules of Court

The Rules for Removal or Retirement of Judges were rearranged and renumbered without substantive change into a unified system designated California Rules of Court by the Administrative Office of the California Court.

RULE 913. Objections to report of masters

Within 15 days after mailing of the copy of the masters' report to the judge, the examiner or the judge may file with the Commission an original and 11 legible copies of a statement of objections to the report of the masters, setting forth all objections to the report and all reasons

in opposition to the findings as sufficient grounds for censure, removal, retirement or private admonishment. The statement shall conform in style to subdivision (c) of rule 15, and when filed by the examiner, a copy thereof shall be sent by mail to the judge.

Formerly Rule 910, adopted, eff. Aug. 1, 1961. Renumbered Rule 913 and amended, eff. Nov. 11, 1966. As amended, Nov. 13, 1976.

RULE 914. Appearance before Commission

If no statement of objections to the report of the masters is filed within the time provided, the Commission may adopt the findings of the masters without a hearing. If such statement is filed, or if the Commission in the absence of such statement proposes to modify or reject the findings of the masters, the Commission shall give the judge and the examiner an opportunity to be heard orally before the Commission, and written notice of the time and place of such hearing shall be mailed to the judge at least

10 days prior thereto.

Formerly Rule 911, adopted, eff. Aug. 1, 1961. Renumbered Rule 914, eff. Nov. 11, 1966.

RULE 919. Certification and review of Commission recommendation

(a) Upon making a determination recommending the censure, removal or retirement of a judge, the Commission shall promptly file a copy of the recommendation certified by the chairman or secretary of the Commission, together with the transcript and the findings and conclusions, with the clerk of the Supreme Court and shall immediately mail the judge notice of the filing, together with a copy of the recommendation, findings, and conclusions.

Formerly Rule 916, adopted, eff. Aug. 1, 1961. Renumbered Rule 919 and amended, eff. Nov. 11, 1966. Renumbered Rule 919(a) and amended, eff. Nov. 13, 1976.

(c) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.

Former Rule 917(b) adopted, eff. Aug. 1, 1961. Renumbered Rule 920(b) and amended, eff. Nov. 11, 1966. Renumbered Rule 919(c), eff. Nov. 13, 1976.

(d) The rules adopted by the Judicial Council governing appeals from the superior court in civil cases, other than rule 26 relating to costs, shall apply to proceedings in the Supreme Court for review of a recommendation of the Commission except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.

Formerly Rule 917(c) adopted, eff. Aug. 1, 1961. Renumbered Rule 920(c) and amended, eff. Nov. 11, 1966. Renumbered Rule 919(d) and amended, eff. Nov. 13, 1976.

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE No. 45	FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon the request of the Commission on Judicial Performance for the appointment of three Special Masters in the above matter, the Supreme Court of the State of California, by orders filed on February 20, 1981 and June 24, 1981, appointed and undersigned: PHILIP H. RICHARDS, Judge of the Los Angeles County Superior Court (Retired); ROBERT W. CONYERS, Judge of the San Diego County Superior Court (Retired), and ROY E. CHAPMAN, Judge of the San Bernardino County Superior Court, as Special Masters to hear and take evidence in such matter and to report thereon to the Commission. (Rule 907, California

Rules of Court; Judge Chapman was designated as Presiding Master.)

The hearing was scheduled to commence on October 5, 1981 in Division I, Alhambra Municipal Court. Proper notice was given to the parties; subpoenas were issued; seventeen trial days were required to conclude the matter on October 30, 1981. Notice of Formal Proceedings filed by the Commission contained eight counts and alleged three specifications of alleged "persistent inability to perform a judge's duties"; "wilful misconduct in office", and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute".

On the standard of clear and convincing evidence the Special Masters respectfully submit the following Findings of Fact and Conclusions of Law.

COUNT I-1
FINDING:

Examiners presented no evidence as to Count I-1 except as contained in Examiners' Exhibit 22(c), respondent's letter to the Commission dated September 2, 1980.

Respondent, in his letter to the Commission admitted that in three cases in 1973, after he had denied motions to release on own recognizance, he had offered defense counsel to grant such release if counsel would issue a personal check for $25 to their favorite charity which respondent would hold and return to them after the cases had been terminated.

Upon complaint by Deputy Public Defender Glenn Nolte respondent discontinued the parctice.

Respondent did not refuse to allow argument on the merits of any motion for bail reduction.

CONCLUSION:

Respondent did not act unreasonably and arbitrarily in matters of bail setting and own recognizance release.

COUNT 1-2
FINDING:

Respondent did not refuse to allow argument on the merits of the request for an own recognizance release for defendant Williams.

Respondent did not state that defendant's motion would be denied unless Mr. Hoffman was requesting defendant's own recognizance release as a special favor in which event the motion would be granted.

CONCLUSION:

Respondent did not act unreasonably and arbitrarily in the foregoing matter.

COUNT 1-3
FINDING:

On or about December 17, 1975, in the case of People v. Larry Williams (M175329), Stan Delnick, a private attorney appointed to represent defendant Williams, requested that respondent

release defendant on his own recognizance. Respondent refused to release defendant on own recognizance who was then free on his own recognizance in two other pending cases, but agreed to release defendant upon posting $50 cash bail, which was done.

CONCLUSION:

Respondent did not act unreasonably and arbitrarily in the foregoing matter.

COUNT I-4
FINDING:

On or about February 26, 1976, respondent ordered defendant Edward Frank Gandora (M176715) released on his own recognizance at arraignment. Approximately 10 minutes later respondent ordered defendant Gandora and Deputy Public Defender Ronald Rose to return to his courtroom whereupon he then revoked defendant's own recognizance release because

of information provided by defendant's mother, who had been present at the arraignment. Respondent then fully disclosed to counsel the nature of the information received and the identity of the informant.

CONCLUSION:

Respondent did not act unreasonably and arbitrarily in the foregoing matter.

COUNT I-5
FINDING:

On or about February 3, 1975 (not 1974 as alleged in the Notice of Formal Proceedings), in the case of People v. Manuel Cruz Cerda (M167759), defendant appeared before respondent for arraignment. The charge was violation of Penal Code section 148. Deputy District Attorney R. Neidorf moved to dismiss the case. In order to determine whether to accept the dismissal respondent inquired as to certain factual matters,

to which objection was made by Deputy Public Defender Bruce Hoffman. Thereupon respondent denied the motion to dismiss; set a pretrial date for February 7, 1975, and bail at $500.

It has not been proved respondent questioned defendant directly on facts related to guilt or innocence.

Respondent did not arbitrarily refuse to hear defendant's own recognizance release motion.

CONCLUSION:

Respondent did not act unreasonably and arbitrarily in the foregoing matter.

GENERAL CONCLUSION AS TO COUNT I:

The foregoing conduct did not constitute persistent inability to perform a judge's duties.

COUNT II-1
FINDING:

The allegation that during the latter months of 1977 respondent threatened Judge Gilbert R. Ruiz

with physical harm if he attempted to become presiding judge of East Los Angeles Municipal Court is not true.

COUNT II-2
FINDING:

On or about February 1980, court interpreter Elizabth Cortes James refused to interpret in a civil case after respondent had ordered her to do so. Respondent directed that she not return to his courtroom. It is not true that respondent screamed at her.

The following moring Ms. James asked if she could return to respondent's courtroom to which he agreed.

COUNT II-3
FINDINGS:

On or about October 31, 1980, during arrignment in People v. Saul Galindo (Notice of Formal Proceedings named defendant as "Sol"), (M214007), respondent set a trial date beyond the 45-day

limit at defendant's request so he could retain private counsel. Before respondent completed his colloquy with defendant, Deputy District Attorney Wendy Widlus interrupted the judge. Thereupon the conversation between respondent and Ms. Widlus was reported by the official court reporter"

"Ms. WIDLUS: Now is the court either going to set within 45 days --

"THE COURT: I'm going to take a time waiver.

I've been doing it for eight years Wendy.

"Ms. WIDLUS: I'm only representing my client, Your Honor.

"THE COURT: I'm neither retarded nor incompetent.

"Ms. WIDLUS: The People's representatives have never articulated the fact that they believe you are retarded or incompetent.

"THE COURT: (To defendant) So that you'll

understand, she thinks I'm dumb; and at times I wonder about her capacity."

At sometime between May and August of 1980, Ms. Widlus came into respondent's court and asked if she could speak to another deputy district attorney then appearing in respondent's court. Respondent then asked Ms. Widlus, in substance, "Why is it do you suppose that I dislike you as much as I do." This statement was not made in an insulting manner.

CONCLUSION:

Respondent did not behave in an abusive and vindictive manner toward court officers in the foregoing matters.

COUNT II-4
FINDING:

On or about June 20, 1980, respondent remonstrated with Deputy District Attorney Wendy Widlus for her tardiness in appearing in another division of the court that morning, which led

to a delay in the appearance in respondent's court of a deputy public defender involved with Ms. Widlus in the other division. On other occasions Ms. Widlus had been late in appearing in respondent's court and he remonstrated with her about that and complained to her supervising deputy about her repeated tardiness. Ms. Widlus admitted that "Punctuality is not one of my strong points." Respondent advised Ms. Widlus that if she continued to be late in appearing in court he would report the matter to District Attorney John Van de Kamp and request that she be transferred from the East Los Angeles Municipal Court.

CONCLUSION:

Respondent did not behave in an abusive and vindictive manner toward court officers in the foregoing matter.

COUNT II-5 (As Amended)

FINDING:

There is no evidence that respondent engaged in abusive, irresponsible and vindictive verbal or written accusations and conduct regarding the reputations of any persons except as contained in respondent's letters to the Commission on Judicial Performance in reply to the Commission's Notices of Preliminar Investigation and Notice of Formal Proceedings in this action (Examiners' Exhibits 22(b) and 22(c) as permitted by rules 903.5 and 904(b), California Rules of Court).

CONCLUSION:

Respondent did not behave in an abusive or vindictive manner toward court officers and court personnel in the foregoing matter.

COUNT II-6
FINDING:

It is not true that respondent addressed Deputy Marshal Joe Rembold as a "lackey".

It is not true that respondent threatened to transfer Deputy Marshal Joe Rembold. Any statement made in this regard was in jest and understood as such by Deputy Marshal Rembold and all others present.

CONCLUSION:

Respondent did not behave in an abusive or vindictive manner toward court personnel in the foregoing matter.

COUNT III-1 a
FINDING:

We find that this charge is not true.

COUNT III-1 b
FINDING:

We find that this charge is not true.

COUNT III-1 b 1 (Ordered by Amendment)
FINDING:

We find that this charge is not true.

COUNT III-1 c
FINDING:

The case of People v. Espinoza (A341242) was set for preliminary hearing on June 30, 1978 in Commission Stanley's courtroom. Defendant's attorney, Roger Diamond, would not stipulate to the commissioner handling the preliminary. No deputy district attorney was present in Commissioner Stanley's court when the case was transferred by Commissioner Stanley to respondent's court. Respondent directed his clerk to call the district attorney's office to determine which deputy was handling the case then before him. The district attorney's secretary did not know who was handling the case and so informed respondent's clerk. Later in the morning, Deputy District Attorney Steven

Lewin entered respondent's court and discovered that the case had been continued on motion of the defendant because of the failure of any deputy district attorney to appear.

CONCLUSION:

Respondent did not overreach or abuse his judicial authority in the foregoing matter.

COUNT III-2 a
FINDINGS:

There is no clear and convincing evidence that respondent did not appoint an attorney for the defendants or that respondent failed to secure a knowing waiver of appointment of counsel. It is not true that respondent spoke with the defendants in chambers or threatened any defendant with deportation if they were convicted of theft.

It is true that respondent accepted guilty pleas (Count II, as amended) to trespass in

violation of Penal Code section 484 was dismissed as to all defendants. The acceptance of the plea and the dismissal of the petty theft charge was with the knowledge and consent of the deputy district attorney.

CONCLUSION:

Respondent did not exert undue or improper pressure on defendants to plead guilty in the foregoing matter.

COUNT III-2 b
FINDING:

On June 22, 1975, in the matter of People v. Linda Lou Dilsaver and Raymond Negrete (M167492), respondent ascertained that defendant Dilsaver had been advised of her constitutional rights including the right to have an attorney appointed to advise her, and respondent obtained a knowing waiver of such constitutional rights. No attorney for the prosecution was

present but the deputy district attorney had waived his right to be present and authorized respondent to amend the complaint to charge trespass in violation of Penal Code section 602(j) and to accept a plea to that charge.

CONCLUSION:

Respondent did not exert undue and improper pressure on defendants to plead guilty in the foregoing matter.

COUNT III-2 c
FINDING:

We find that the charges stated are true.

CONCLUSION:

Respondent did exert undue and improper pressure on defendant to stipulate to probable cause for his arrest in the foregoing matter.

COUNT III-2 d
FINDING:

In February of 1980, a defendant appeared with counsel before respondent on a pretrial hearing. Deputy District Attorney Kenneth Loveman was present and advised respondent that he and defense counsel had arrived at a disposition of the drunk-in-public charge against the defendant. The agreement was that the charge would be dismissed upon defendant's payment of $70 court costs. Respondent asked defense counsel if he wasn't aware of respondent's standard fine of $25 in such cases; that if defendant paid $25 he would thus save $50 but would have a record. If he paid $70 the case would be dismissed. The deputy district attorney said this isn't a market place; I'm not here to haggle; this is a plea bargain. The deputy district attorney then moved to dismiss the charge in the interest of justice without the payment of costs and respondent did dismiss the charge.

CONCLUSION:

Respondent did not exert undue or improper pressure on defendant to plead guilty in the foregoing matter.

COUNT III-3 a
FINDING:

In May of 1978, a felony charge was filed against a Mr. Kasparian (in case No. A343103). Mr. Semon Kesperoff, a friend of defendant's father, and also a long-time friend of respondent in the community, asked respondent what they could do about the case. Respondent told them he had no control over the matter; to go talk to Deputy District Attorney Joseph R. Martinez. Mr. Kesperoff asked Deputy District Attorney Martinez how the charge might be resolved. Mr. Martinez told them no change was possible. Neither Kesperoff nor Kasparian, Sr. returned to see respondent. Respondent did not speak directly with Mr. Martinez about this case.

Mr. Kesperoff contributed $250 to respondent's campaign for superior court and also contributed the same amount to the other candidate for the same office.

CONCLUSION:

Respondent did not use his judicial office improperly in the foregoing matter.

COUNT III-3 b
FINDING:

In People v. Rebecca Hernandez (S.A.A.C. No. 6076), respondent ruled that the dog leash law was unconstitutional. The district attorney appealed the ruling on procedural grounds. Respondent asked Deputy District Attorney Joseph R. Martinez if they wouldn't test the case on its merits as opposed to the procedural issue. Respondent never asked or suggested that the district attorney drop its appeal.

CONCLUSION:

Respondent did not use his judicial office improperly in the foregoing matter.

COUNT III-3 c
FINDING:

In March of 1978, in the case of People v. Frank Jose Terrones (M191676), Deputy Sheriff Art Guerra, a friend of Terrones, asked respondent if he could do anything about the case which was not then pending before respondent. Respondent asked Deputy District Attorney Joseph R. Martinez to review the case and see if within office policy he could do anything for defendant.

In March of 1978, respondent did not know Mr. Terrones or his son, the defendant. Defendant Terrones had already pled guilty and been sentenced at the time of the respondent's conversation with Mr. Martinez.

CONCLUSION:

Respondent did not use his judicial office improperly in the foregoing matter.

COUNT III-3 d
FINDING:

It is true that in the case of People v. Mario Pedro Gallardo (M208640), respondent suggested to Deputy District Attorney Wendy Widlus a dismissal not simply because the defendant was a veteran, but because the defendant was undergoing psychiatric treatment on a periodic basis at the Veteran's Hospital and for the further reason that the charge was a non-aggravated Penal Code section 415.

CONCLUSION:

Respondent did not use his judicial office improperly in the foregoing matter.

COUNT III-3 e (As Amended)
FINDING:

On or about August 30, 1980, one Vardan Mosikian, Jr. was arrested at 2 a.m. for drunk driving. The defendant Mosikian was acquainted with the sone of Edward Sarkissian, a long-time frine of respondent. Mr. Sarkissian telephoned respondent at about 3 a.m. and asked if he could help him help his son's friend. Respondent told him the son would be out in a few hours anyway. Mr. Sarkissian said the defendant's father wanted him out of jail before defendant's mother learned of the arrest because the mother had a health problem. Respondent, With Mr. Sarkissian, went to the jail at about 5 a.m. and talked with the police officer in charge. The officer testified in these proceedings that respondent introduced himself and at the officer's request showed his identification. Respondent asked the officer, if it is not against office policy could he release the defendant either on

bail or to respondent or his own recognizance. The officer testified that he did not feel "outranked" or offended and that respondent was polite and courteous. Defendant was released into respondent's custody at 5:15 a.m.

CONCLUSION:

Respondent did not use his judicial office improperly in influencing or attempting to influence any law enforcement officer in the foregoing matter.

COUNT III-3 f
FINDING:

On or about October 30, 1980, the case of People v. Antonio Perez Duran (M212953), came before respondent for pretrial. The People were represented by Howard Wolf and the defendant by his counsel John Tosello. The charge was 23102(a), Vehicle Code, driving under the influence of alcohol.

Defense counsel moved to continue the hearing for a motion to declare a prior conviction on the same charge unconstitutional. The People objected because the prior conviction was not alleged. Respondent ordered the deputy district attorney to file an allegation of the prior conviction so that the constitutionality of that prior conviction might be tested in the instant proceeding. The People objected again and, believing he had the authority to do so, respondent ordered the allegation of the prior conviction to be filed. Mr. Wolf again objected and told the court the district attorney would not be present on November 10, 1980, the date set by the court for a hearing on the motion to declare the alleged prior unconstitutional. Respondent was aware of statutes dealing with the court's power to add allegations to a complaint but did not then have in mind that those statutes confined themselves to felony charges.

CONCLUSION:

Respondent committed judicial error but did not use his judicial office improperly in influencing or attempting to influence officers of the court concerning criminal matters.

COUNT III-3 g
FINDING:

On or about November 17, 1980, a defendant charged with violation of the dog-leash ordinance, appeared in respondent's court for arraignment. The defendant requested immediate disposition of the case because it would impose a hardship on the defendant to return to court. Deputy District Attorney Judy Abrams was present in respondent's court. Respondent asked her if she would object to his taking the plea and sentencing the defendant to the standard penalty forthwith for the convenience of the defendant. She refused, mentioning the affidavits of prejudice which were then being

filed against respondent in each criminal case. Respondent asked if she couldn't go along with the plea in this case and simply do nothing about the affidavit or withdraw it. Deputy District Attorney Abrams refused.

CONCLUSION:

Respondent did not use his judicial office improperly in influencing or attempting to influence an officer of the court in the foregoing matter.

COUNT III-3 h (Added by Amendment)
FINDING:

No evidence was introduced on this Count.

COUNT IV
FINDING:

None of the charges that respondent made improper or unwanted sexual advances toward Maria Rody Moreno is proved.

CONCLUSION:

Respondent did not make any improper or unwanted sexual advances toward Maria Rody Moreno.

COUNT V-1
FINDING:

In the case of People v. Pedro Gutierrez (M201446), on April 18, 1980, respondent, in a jury trial, permitted the use of a sworn but non-certified Spanish interpreter for a period of less than 30 minutes until the certified court interpreter did arrive. The non-certified interpreter was an agent or employee of defense counsel. The prosecutor objected to the use of a non-certified interpreter and her objection was overruled. The respondent, who is fluent in Spanish, on two occasions corrected or made clear what the non-certified interpreter had translated.

Respondent exercised reasonable judicial discretion in this instance.

COUNT V-2
FINDING:

It is not proved that respondent on any occasion during the period 1975 through March 1979 left the bench during testimony in a criminal proceeding instructing counsel for both sides to continue adducing testimony during his absence.

COUNT V-3
FINDING:

On or about May 25, 1978, in the case of People v. Rebecca Hernandez (S.A.A.C. 6076), respondent declared unconstitutional the county ordinance dealing with the leashing and licensing of dogs and dismissed the charges of violating those laws. This was done in chambers without notice to or appearance by the prosecution and without any motion by or appearance by the defendant. The ruling was made by

respondent after defendant had failed to appear on April 27, 1978 for arraignment.

COUNT V-4
FINDING:

On or about October 22 - 23, 1980, in the cases of People v. Jesus Guerrero (M213859) and People v. Armando Lomelia (M213917), respondent scheduled jury trials (for defendants who were in custody at the commencement of the arraignment but who were released from custody by respondent at the arraignment) for dates that were more than 30 days but less than 45 days after the date of arraignment over the objection of both the People and counsel for the defendants. The respondent did this in good faith and with reasonable reliance upon a prior Los Angeles County case of People v. Roland Tofield, Jr., VTS 1140.

COUNT V-5
FINDING:

On or about December 8, 1975, respondent's courtroom bailiff, Bob Gil, worked from time to time during the day, including his lunch hour, for the total time of about one hour in drawing a chart for use in the respondent's private lawsuit, without in any way interfering with the performance of his regular duties as courtroom bailiff.

COUNT V-6
FINDING:

On or about June 5, 1980, during a jury trial in the case of People v. John Monroy (M207019), the prosecutor called to the witness stand the defendant's common-law wife whom he had subpoenaed as a witness. Defense counsel had nformed the prosecutor that the witness would probably be hostile to the prosecution. The prosecutor, in the presence of the jury,

before asking any questions of the witness, asked the court to declare the witness a hostile witness because of her bias. Defense counsel objected. A heated argument between counsel occurred at the bench. Respondent, in an effort to cure any prejudice resulting from the prosecutor's statement, advised the jury that the witness was living with defendant so she would be prejudiced on his behalf. The respondent added that the overall credibility of the witness was for the jury to determine in light of any possible bias of the witness.

At request of defense counsel the discussion between the court and counsel continued in chambers where defense counsel moved for a mistrial. Respondent offered to give more latitude in cross-examination and to instruct the jury to disregard all of the argument over the evidentiary issue. Defense counsel said that he was not satisfied and renewed his motion for a mistrial which the respondent then granted.

COUNT V-7
FINDING:

We find that respondent did not accept any pleas of guilty from any defendant without ascertaining that said defendants had been fully advised of all constitutional rights and without respondent receiving waivers as to specific rights.

COUNT V-8
FINDING:

In 1974 and 1975 there was an agreement between the district attorney's office and the divisions of respondent's court that deputy district attorneys need not be present at the time of the arraignment calendar and in certain specified charges need not be present when plea bargaining occurred and pleas were taken by any of the divisions of the court. Consonant with this practice, in the case of People v. Francisco and Laura Echevarria (M166848), respondent accepted a plea to a lesser charge and

pronounced judgment with probation and a fine.

The Examiners conceded to the Masters that their charges were not proved in the cases of People v. Dilsaver (M167492) and People v. Burbridge (M168815).

COUNT V-9
FINDING:

It is true that between 1972 and 1977, on a few occasions, the respondent did enter the jury room during the deliberations but under the circumstances of each such entry, there was no impropriety.

COUNT V-10 (As Amended)
FINDING:

It is true that respondent denied requests of the Los Angeles County district attorney's and public defender's offices to provide court reporters in some criminal trials in accordance with the policy of the court and within the discretionary power of the court as provided by

law and in each case such denial was not arbitrary.

COUNT V-11
FINDING:

It is true that during the period 1978 to 1981, the respondent occasionally did accept telephone calls at the bench but it is not true that he did so during testimony in a criminal case in which he ordered the proceedings to continue or otherwise where it would adversely affect the orderly administration of justice.

COUNT V-12
FINDING:

There was no evidence introduced in support of this charge.

COUNT V-13
FINDING:

In People v. Dilsaver (M167492), the Examiners conceded, and we find that this charge

was not proved.

In People v. Manuel Cruz Cerda (M167759), see or Finding as to COUNT 1-5 which is incorporated herein by reference as the Finding for this Count.

COUNT V-13a (Added by Amendment)
FINDING:

There is no clear and convincing evidence that respondent ever had the practice of questioning defendants regarding the facts of their cases, without advisement of rights or in the absence of their attorneys, either before or during the period of June 1978 to January 1981.

COUNT V-14
FINDING:

It is true that during the period from 1972 to 1977, while respondent was on the bench during criminal proceedings, he did receive comments from unsworn persons regarding motions for release of a defendant on his own recognizance

or the setting of bail but it is not true that respondent accepted such comments in other motions or as evidence in a case on trial.

COUNT V-15
FINDING:

On one occasion when respondent was the only judge on duty in the East Los Angeles Municipal Court and was handling calendars for other divisions, respondent announced that in cases charging Vehicle Code infractions which carried no more than one point license penalty, on pleas of guilty, one-half the customary fine would be imposed on that day. Respondent did not offer one-half of the customary penalty with respect to misdemeanors.

COUNT V-16 (Added by Amendment)
FINDING:

In People v. Viele (M173402), a motion by defendant's counsel to dismiss was set for hearing before respondent on August 12, 1976. Counsel

for defendant and a deputy district attorney appeared but attorney Henry Barbosa, as special counsel for the City of Montebello which was not a party to the case, did not appear. Attorney Barbosa telephoned requesting a continuance to the next day to which both counsel of record objected. Counsel of record then present, argued the motion and consented that attorney Barbosa appear and present further argument in their absence on August 13, 1976. On August 13, attorney Barbosa appeared and waived further argument and requested that the matter be submitted on the written Points and Authorities previously filed.

Thereafter, on August 26, respondent granted the motion to dismiss declaring the ordinance unconstitutional.

CONCLUSION:

Respondent has not persistently or otherwise conducted court business in a manner demonstrating

ignorance of or indifference to procedure required by law essential to the fair, orderly, and decorous administration of justice in the foregoing matters.

COUNT VI-1
FINDING:

It is true that on the occasion referred to respondent did make the remark alleged. Immediately, and several times thereafter, respondent apologized to Deputy District Attorney David Milton to whom the remark was made. Said deputy district attorney testified that he considered respondent a personal friend and that he was not offended and that he repeatedly told respondent that no apology was necessary.

COUNT VI-2
FINDING:

In a telephone conversation with Deputy District Attorney Joseph R. Martinez, the supervising Deputy at the East Los Angeles Municipal

Court, respondent, in complaining about the continued tardiness of Deputy District Attorney Wendy Widlus, referred to her as a "female broad".

COUNT VI-3
FINDING:

There is no clear and convincing evidence in the truth of the charge.

COUNT VI-4
FINDING:

Between November 1979 and November 1980, respondent was conducing voir dire examination of the jury panel and one series of questions dealt with inflation. One juror being questioned was a black woman who was a checker at a Safeway supermarket. The juror, Shirley J. Bryant, testitied in these proceedings that during a general discussion on the prices of produce, respondent asked her if she knew the price of watermelons at Safeway. She was not offended.

It is not true that Deputy District Attorney Bert Carter told respondent that the question was potentially offensive and it is not true that respondent repeated the question to the same juror at a later appearance.

COUNT VI-5
FINDING:

It is true that the respondent made the statement alleged but that it was intended in jest and not made maliciously.

COUNT VI-6
FINDING:

During pronouncement of a judgment of a tall, large male of Mexican extraction, on the charge of beating his wife, who was small in stature, the respondent did state that such course of conduct may be tolerated in Mexico but would not be tolerated in California. No reference was made to Africa on that occasion.

COUNT VI-7
FINDING:

On occasions the respondent refused to follow counsels' interpretations of cited decisions and issued rulings contrary to counsels' contentions.

COUNT VI-8
FINDING:

Our Finding in COUNT III-3d of these Findings is incorporated here by reference.

Respondent, in a conversation at bench with the deputy district attorney who was objecting to any dismissal of the charge or to the judge taking a plea stated: "How petty can you be -- you know he's under medical treatment."

COUNT VI-9
FINDING:

It is true that on the occasion specified, the respondent did request Kenneth Loveman to

come to his courtroom to discuss a problem of court business; that when Mr. Loveman appeared, the problem had been solved and the court was in session on another matter. In order not to retain Mr. Loveman unduly, respondent gently waived his hand indicating he no longer needed Mr. Loveman's assistance.

In February of 1980, Kenneth Loveman, for the prosecutor, and John Tosello, for defendant, appeared before respondent with a negotiated plea which would leave the sentencing up to the judge. Defense counsel asked for an indicated sentence; Mr. Loveman objected, stating to respondent that if that was done either defendant might not plead or he, Loveman, would have to agree to a sentence bargain which was against his office policy. Respondent stated he believed it was defendant's right to have an indicated sentence and that "only in Russia does somebody have to plead without knowing exactly what his sentence will be." Mr. Loveman

then walked out of the courtroom stating: "I don't have to put up with that."

COUNT VI-10
FINDING:

It is true on the occasion specified respondent had come from the meeting alleged which occasioned him to be late in convening court. He then made the remark as alleged and specifically advised the jury to disregard his remark so far as it might reflect on the deputy district attorney in the case on trial.

CONCLUSION:

Respondent has not, in open court or in private communications with persons associated with the court, improperly or otherwise engaged in personal verbal attacks, indulged in indelicate sexual or ethnic remarks, or made comments which cast doubt upon is appreciation of the nature and importance of his judicial duties and

his ability to sit as a fair and impartial judge in the foregoing matters.

COUNT VII-1
FINDING:

The Findings made with respect to COUNTS I - VI, inclusive, are incorporated herein by reference.

COUNT VII-2
FINDING:

There is no clear and convincing evidence to support this allegation.

COUNT VII-3
FINDING:

As presiding judge of the East Los Angeles Municipal Court during October and November 1980, respondent reasonably and properly refused to require the clerk of the court to furnish the district attorney's office memoranda of pretrial, trial, preliminary hearing, and other

court dates.

In retaliation, the district attorney filed disqualification affidavits in every criminal matter before respondent and also refused to stipulate to hearing before the commissioner.

COUNT VII-4
FINDING:

It is true that on occasions respondent did critically remark as to the work habits of his judicial colleagues but it is not true that he ever recklessly threatened, inculted or impugned the integrity of such colleagues.

COUNT VII-5
FINDINGS:

Respondent's correspondence with the Commission on Judicial Performance since notification of preliminary investigation on or about June 5,1980, was made in accordance with rules 903.5 and 904(b), California Rules of Court, and does not manifest a reckless disregard for

judicial duties and responsibilities as expressed in the Code of Judicial Conduct.

CONCLUSION:

Respondent's tenure in judicial office has not been characterized by a course of conduct which reflects a lack of knowledge, temperment and judgment necessary for the proper administration of justice in the state courts.

UNNUMBERED COUNT FINDING: (Pages 18 and 19 of Formal Proceedings)

Our Findings as to COUNTS I - VI, inclusive, are incorporated by reference herein.

GENERAL FINDINGS:

1. Respondent has been a judge of the East Los Angeles Municipal Court since 1972. Prior thereto he was an investigator for the public defender and prior to that a deputy sheriff.

2. Respondent, as appears from his name, is of Hispanic heritage. By nature he appears to be brusque and outspoken and may well unwittingly irritate some of those whith whom he deals. Himself, diligent in the dispatch of the court's business, he tends to be intolerant of tardiness or lack of diligence in others.

3. The East Los Angeles Municipal Court serves mainly an Hispanic constituency, with a heavy load of misdemeanor and felony preliminary cases.

4. The complaints with which the pending inquiry is concerned come not from the litigants, private attorneys, the witnesses, the jurors, or concerned citizens, but for the years 1973 to 1976, from the deputy public defenders, primarily the head Deputy, Bruce Hoffman, and for the years 1978 to 1980, from the deputy district attorneys, primarily the head Deputy, Joseph R. Martinez. There was an obvious personality clash between respondent and Mr. Hoffman

and later between respondent and Mr. Martinez. Prominent among the problems is one which many judges face as to whether the judge or some other public official is to control the operation of the court.

CONCLUSION:

Respondent has not engaged in actions which constitute wilful misconduct in office or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Signed this 25 day of November 1981.

Respectfully submitted,

/s/
ROY E. CHAPMAN
Special Master, Presiding

/s/
PHILIP H. RICHARDS
Special Master

/s/
ROBERT W. CONYERS
Special Master

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MARIO P. GONZALEZ, A Judge of the Municipal Court, Petitioner, v. COMMISSION ON JUDICIAL PERFORMANCE, Respondent.	NO. L.A. 32572 (INQUIRY CONCERNING A JUDGE NO. 45) PETITION FOR WRIT OF REVIEW IN THE NATURE OF A MOTION FOR RECALL OF REMITTITUR OR MOTION TO RECALL, VACATE AND AMEND JUDGMENT.

TO: THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The Petition of MARIO P. GONZALEZ for a Writ of Review in the Nature of a Motion to Recall the Remittitur or a Motion to Recall, Vacate and Amend Judgment srespectfully alleges:

RELIEF SOUGHT

1. The vacation and setting aside of the Order of this Court dated February 7,

1983, removing Petitioner from his offices as Judge of the Municipal Court for the East Los Angeles Judicial District.

2. An Order to the Commission on Judicial Performance, (hereafter COMMISSION), directing a dismissal of the charges in Inquiry No. 45 as of May 5, 1982.

GROUNDS FOR PETITION

1. The COMMISSION was without jurisdiction to conduct a second trial of Petitioner after his first exoneration (acquittal) at his first trial, and was without jurisdiction to recommend removal by this Court.

2. Judicial Council Rules (hereafter "Rules") 913, 914 and 919, purporting to confer such jurisdiction on the COMMISSION, are unconstitutional and void and in violation of the Due Process, Equal Protection and "Double Jeopardy"

provisions of the United States Constitution, Amendments Five and Fourteen.

3. The "recommendation of removal" was an act in excess of the jurisdiction of the COMMISSION; a nullity and void.

4. The recommendation of removal being a nullity and void this Court was without jurisdiction to order the removal of Petitioner (California Constitution, Article 6, Section 18).

ALLEGATIONS IN SUPPORT OF PETITION

Petitioner incorporates by reference the "Statement of the Case" in his original Petition to this Court, at pages 1 through 3 thereof, and summarizes them for the purpose of this Petition as follows. (A copy of pp. 1-3 is attached for the convenience of the Court).

1. Petitioner was accused of 55 specified acts of judicial misconduct. After 17 days of trial, wherein witnesses were called and sworn

and exhibits introduced and received in evidence, Petitioner was acquitted on 54 of these "Counts", the Special Masters' Findings of Fact being based on the "standard of clear and convincing evidence" (Findings of Fact and Conclusions of Law, p. 2). Although one charge of unjudicial conduct was found to be true (Count III, par. 2(c)), the ultimate finding of the Special Masters was (Findings of Fact and Conclusions of Law, p. 36):

> "Respondent has not engaged in actions which constitute willful misconduct in office or conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

2. This Conclusion or Finding of Fact exonerating the Petitioner was based upon the specific findings as to each charge (pp. 2-35), and the General Findings of Fact (pp. 35-36):

"1. Respondent has been a judge of the East Los Angeles Municipal Court since 1972. Prior thereto he was an investigator for the public defender and prior to that a deputy sheriff.

2. Respondent, as appears from his name, is of Hispanic heritage. By nature he appears to be brusque and outspoken and may well unwittingly irritate some of those with whom he deals. Himself, diligent in the dispatch of the corut's business, he tends to be intolerant of tardiness of lack of diliggence in others.

3. The East Los Angeles Municipal Court serves mainly an Hispanic constitutency, with a heavy load of misdemeanor and felony preliminary cases.

4. The complaints with which the pending inquiry is concerned come not from the litigants, private attorneys, the

witnesses, the jurors, or concerned citizens, but for the years 1973 to 1976, from the deputy public defenders, primarily the head Deputy, Bruce Hoffman, and for the years 1978 to 1980, from the deputy district attorneys, primarily the head Deputy, Joseph R. Martinez. There was an obvious personality clash between respondent and Mr. Hoffman and later between respondent and Mr. Martinez. Prominent among the problems is one which many judges face as to whether the judge or some other public official is to control the operation of the court."

3. Thereafter the examiner (prosecution) filed objections (appeal) to the COMMISSION pursuant to Rule 913, and on May 5, 1982, based upon the record at trial, the COMMISSION HEARD the objection (appeal) of the examiner, re-tried the Petitioner, and found him "guilty" of 21

Counts of judicial misconduct, thereafter recommending the removal of Petitioner. These acts of the COMMISSION were done pursuant to the purported authority of Rules 914 and 919.

4. Thereafter, this Court reviewed the actions of the COMMISSION and ruled the COMMISSION's findings and recommendations to be supported by "clear and convincing evidence", ignoring the findings of exoneration (acquittal) by the Special Masters, the triers of the facts.

5. Petitioner was denied Due Process of Law and Equal Protection of the Law and was twice put in jeopardy for the same offense, and Rules 913 and 914 on the cace and as applied to Petitioner are unconstitutional and void, and in violation of United Staes Constitution, amendments Five and Fourteen, in that said Rules and procedcures permit and sanction an appeal from findings of exoneration (acquittal), and condone and sanction successive trials.

6. Petitioner was denied Equal Protection and Due Process of Law and Rule 919 is unconstitutional and void, and in violation of United States Constitution, Amendments Five and Fourteen, in that said Rules and procedures permit the COMMISSION, acting as an appellate tribunal, to make factual findings of guilt contrary to the factual findings of exoneration made at the trial of the Petitioner.

7. The review by, and findings and recommendations of the COMMISSION were acts in excess of jurisdiction and void.

8. The review and Order of Removal by this Court based on the unconstitutional acts, findings and recommendations of the COMMISSION, were acts in excess of the jurisdiction of this Court, and void.

9. The removal of the Petitioner from his judicial office deprived the Petitioner of his property without Due Process of Law.

10. Petitioner has no plain, speedy, or adequate remedy at law other than by this Petition/Motions.

11. This Petition/Motions are based upon all the files and records of this Court in Case No. L.A. 31572, and incorporate the files and records before the Commission on Judicial Qualifications in Inquiry Concerning a Judge No. 45, and upon the Points and Authorities submitted herewith, and upon such other and further arguments and authorities as shall be adduced at the time of the hearing of this Petition/Motions.

WHEREFORE, Petitioner respectfully prays that this Court issue a Writ of Review, or in the alternative, this Court vacate and set aside its Order of February 7, 1983, removing Petitioner from his office as Judge of the Muncicipal Court for the East Los Angeles Judicial District, and enter a new and different Order recalling,

vacating and amending said Order of February 7, 1983, directing the Commission on Judicial Performance to dismiss the charges in Inquiry No. 45 as of May 5, 1982.

Respectfully submitted,

/s/
BURTON MARKS
A Professional Corporation
Attorney for Petitioner